

may be granted if the Secretary finds that the order is necessary in the public interest to prevent an imminent violation. 15 CFR 766.24. A Respondent may appeal the imposition of any such TDO on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported. 15 CFR 766.24(e)(4). The relevant issue at hand, therefore, is whether or not the finding that a TDO was necessary to prevent an "imminent" violation is supported.

The Regulations provide that a violation is "imminent" if:

[T]he general circumstances of the matter under investigation demonstrate a likelihood of future violations. *To indicate the likelihood of future violations, BXA may show that the violation under investigation is significant, deliberate, covert and/or likely to occur again*, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to ceased along with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements.

15 CFR 766.24(b)(3) (emphasis added).

The BXA introduced the following in support of its argument that the violation under investigation is significant, deliberate and covert. First, BXA avers, and I concur, that the activities under question involved exports of U.S.-origin commodities to Libya. Libya, is a country which is subject to restrictive economic controls. See Libyan Sanction Regulations, 31 CFR Part 550 (1996). Under the regulation virtually all exporting and re-exporting to Libya are monitored and controlled, requiring a license issued by the Office of Foreign Assets Control (hereinafter "OFAC"). This office has no record of Thane-Coat, Inc. or TIC, Ltd. ever requesting such a license. Gov. Ex. 1, Ex. 15).

Second, an export scheme was undertaken to complete the export of pipe coating materials to Libya. Thane-Coat, Inc. through Ford and Engebretson, using TIC, Ltd. as the exporter of record, obtained coating products from U.S. manufacturers and had those items delivered to U.S. ports for export to Fleixstow, United Kingdom. (Gov. Ex. 1). Once in the U.K., Harkmel International "re-stuffed" the cargo, unloading it from 40-foot containers at the U.K. port of Felixstowe and reloading it into 20-foot containers. These containers were re-stuffed based upon the advice from Harkmel that use of the same containers would be "a flag for person following movements to country." (Gov. Ex. 1). The repackaged

containers were then sent to Marsa El Brega, Libya. (*Id.*).

Based upon the above evidence, BXA has shown that Respondents committed a violation that was both significant, deliberate and covert. In light of this, the Acting Assistant Secretary's decision to issue a TDO is clearly supportable.

### Conclusion

In light of the fact that Respondents entered into a scheme of violations which were not only deliberate, but also covert, it is hereby strongly recommended that the decision of the Acting Assistant Secretary to temporarily deny export privileges to the Respondents for a period of 180 days be affirmed.

### Recommendation

*It is Hereby Recommended* That the issuance of the Order Temporarily Denying Export Privileges to Thane-Coat, Inc., Jerry Vernon Ford, Preston John Engebretson, Export Materials, Inc. and Thane-Coat International, Ltd., be *Affirmed*.

Dated on the 11th day of June 1997, Baltimore, Maryland.

**Hon. Joseph N. Ingolia,**

*Chief Administrative Law Judge, United States Coast Guard.*

### Certificate of Mailing

I hereby certify that I forwarded the attached document by federal express to the following persons:

Jeffrey M. Joyner, Esq., Office of Chief Counsel for Export Administration, Bureau of Export Administration, United States Department of Commerce, H3839, 14th and Constitution, NW., Washington, DC 20230. Samuel J. Buffone, Thomas B. Smith, Ropes & Gray, 1301 K Street, NW., Suite 800 East, Washington, DC 20005.

Undersecretary for Export Administration, Bureau of Export Administration, United States Department of Commerce, 14th and Constitution, NW., Washington, DC 20230.

Dated this 11th day of June 1997, Baltimore, Maryland.

**Joi L. Johnson,**

*Legal Assistant to Chief Judge Ingolia.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Lamont-Doherty Earth Observatory of Columbia University Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Docket Number:* 97-033. *Applicant:* Lamont-Doherty Earth Observatory of Columbia University, Palisades, NY 10964. *Instrument:* ICP Mass Spectrometer, Model Plasma 54. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 62 FR 27237, May 19, 1997.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) an ICP ion source, (2) a double focusing magnet sector mass analyzer and (3) a detection system equipped with nine Faraday detectors and a Daly detector. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.